

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JAMES J. KAUFMAN #351960,

ORDER

Plaintiff,

09-cv-300-bbc

v.

RICK RAEMISCH, QUALA CHAMPAGNE,
CYNTHIA THORPE, THOMAS BOSTON,
MARY MILLER, PETER HUIBREGTSE,
AMY GLEISNER, DEBRA SHORT
and GENA JARR,

Defendants.

In a July 17, 2009 order, I denied plaintiff James Kaufman's request for leave to proceed in forma pauperis on his proposed complaint because he has struck out under 28 U.S.C. § 1915(g). I gave plaintiff the option of pursuing his case as a paying litigant by submitting the \$350 filing fee by August 7, 2009. Plaintiff has not done so. Instead, he has submitted a motion for reconsideration of the July 17, 2009 order in which he argues the court erroneously determined that he had three strikes. Because I conclude the three-strike determination was correct, I will deny plaintiff's motion for reconsideration and direct the clerk of court to close the case.

Plaintiff argues that he should not have been assessed strikes in any of the three cases mentioned in the July 17, 2009 order, because in each case he was allowed to proceed on some of his claims even though he was not allowed to proceed on others. Thus none of the entire actions were dismissed entirely, which he believes is necessary in order to be assessed a strike. This is incorrect. In George v. Smith, 507 F.3d 605, 607-08 (7th Cir. 2007), the Court of Appeals for the Seventh Circuit made it clear that a strike should be assessed if *any* claim in a complaint is frivolous, malicious or fails to state a claim (although only one strike may be issued in each action before the district court). Because in each case plaintiff was denied leave to proceed on individual claims that were frivolous, malicious, or failed to state a claim, it was proper to assess strikes in each of those cases, making him ineligible to proceed in forma pauperis in the present case. Therefore, I will deny plaintiff's motion for reconsideration of the July 17, 2009 order in this case. Also, because plaintiff has failed to pay the \$350 filing fee, I will direct the clerk of court to close the case.

ORDER

IT IS ORDERED that:

1. Plaintiff James Kaufman's motion for reconsideration of the July 17, 2009 order in this case, dkt. #6, is DENIED; and

2. The clerk of court is directed to close the case.

Entered this 28th day of August, 2009.

BY THE COURT:

/s/

BARBARA B. CRABB
District Judge